

§ 80.70 Covered areas.

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(l) The ozone nonattainment areas listed in this paragraph (l) are covered areas beginning on May 1, 1995 at the terminal. No requirements under subpart D shall apply to gasoline at a retail outlet or at the facilities of a wholesale purchaser/consumer until June 1, 1995. The geographic extent of each covered area listed in this paragraph (l) shall be the nonattainment boundaries as specified in 40 CFR part 81, subpart C:

- (1) The following Wisconsin counties:
 - (i) Kewaunee;
 - (ii) Manitowoc;
 - (iii) Sheboygan.
- (2) [Reserved]

[FR Doc. 95-420 Filed 1-10-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 80

[FRL-5134-7]

Temporary Administrative Stay of the Reformulated Gasoline Program: Nine Counties in New York, Twenty-Eight Counties in Pennsylvania, and Two Counties in Maine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In today's action, EPA is temporarily staying the reformulated gasoline program requirements in nine opt-in counties in New York, in twenty-eight opt-in counties in Pennsylvania and in two opt-in counties in Maine. Today's action stays the applicability of the RFG requirements for these areas effective from January 1, 1995, until July 1, 1995. Although EPA believes that the RFG program provides a highly cost-effective means of reducing ground-level ozone and toxic vehicle emissions, the Agency believes that States should be given the flexibility to choose which programs best meet each State's needs for emissions reductions. In a separate notice of proposed rulemaking to be published soon, EPA will propose to approve the requests for opt-out for these specified counties from the States of New York, Pennsylvania, and Maine. EPA will be unable to take final action on this proposed rulemaking by January 1, 1995, the date when RFG requirements must be met at the retail level. EPA believes a stay in the implementation of the reformulated gasoline requirements in these areas effective January 1, 1995 and continuing until July 1, 1995, will avoid significant disruption in the marketplace while

notice and comment rulemaking proceeds. This temporary stay is issued without prior notice and comment, based on good cause described herein.

EFFECTIVE DATE: This rule is effective on December 29, 1994.

ADDRESSES: Materials relevant to this action have been placed in Docket A-94-68. The docket is located at the Air Docket Section (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M-1500 Waterside Mall.

Documents may be inspected from 8:00 a.m. to 4:00 p.m. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT:

Mr. Mark Coryell, U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW. (6406J), Washington, DC 20460, (202) 233-9014.

SUPPLEMENTARY INFORMATION: A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919-541-5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

- (M) OMS
- (K) Rulemaking and Reporting
- (3) Fuels
- (9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following titles: STAY.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the

document may be downloaded, changes in format, page length, etc. may occur.

I. Background

A. General Background on Reformulated Gasoline Program and Opt-In Process

The reformulated gasoline program is designed to reduce ozone levels in the largest metropolitan areas of the U.S. with the worst ground-level ozone problems by reducing vehicle emissions of the ozone precursors, specifically volatile organic compounds (VOC), through fuel reformulation. Reformulated gasoline also achieves a significant reduction in air toxics. In Phase II of the program, nitrogen oxides (NO_x), another precursor of ozone, are reduced. The 1990 amendments of the Clean Air Act require reformulated gasoline in the nine cities with the highest levels of ozone. Congress also provided the opportunity for states to choose to opt into the RFG program for their other nonattainment areas.

EPA issued final rules establishing requirements for RFG on December 15, 1993 (59 FR 7716, February 16, 1994). During development of the RFG rule, a number of states inquired as to whether they would be permitted to opt out of the RFG program at a future date or to opt out of certain of the requirements. This was based on their concern that the air quality benefits of RFG, given their specific needs, might not warrant the cost of the program, specifically focusing on the more stringent standards in Phase II of the program (starting in 2000). Such states wished to retain their ability to opt out of the program. Other states indicated they viewed RFG as an interim strategy to help bring their nonattainment areas into attainment sooner than would otherwise be the case.

The regulation issued on December of 1993 did not include procedures for opting out of the RFG program, because EPA had not proposed and was not ready to adopt such procedures at that time. However, the Agency did indicate that it intended to propose such procedures in a separate rule.

B. Jefferson County, New York

Jefferson County was included as a covered area in EPA's reformulated gasoline regulations based on Governor Mario Cuomo's request of October 28, 1991, that this county be included under the Act's opt-in provision for ozone nonattainment areas (57 FR 7926, March 5, 1992). See 40 CFR 80.70(j)(10)(vi). On November 29, 1994, EPA received a petition from the Commissioner of New York's

Department of Environmental Conservation, Mr. Langdon Marsh, to remove Jefferson County, New York, from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Marsh is acting for Governor Cuomo on this matter. The Administrator responded to the State's request in a letter to Commissioner Marsh dated December 12, 1994, stating EPA's intention to grant New York's request as of January 1, 1995, and to conduct rulemaking to implement the opt-out. The Administrator also announced that effective January 1, 1995, and until the rulemaking to remove Jefferson County from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in Jefferson County. This decision was based on the particular circumstances that apply in Jefferson County.

C. The Buffalo and Albany Areas of New York

On December 23, 1994, Commissioner Marsh of New York's Department of Environmental Conservation wrote to request opt-out of the Albany and Buffalo areas which include the counties of Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Erie and Niagara. The Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Marsh dated December 28, 1994, stating EPA's intention to grant New York's request as of January 1, 1995, and to conduct rulemaking to implement the opt-out. The December 28, letter also indicated EPA's intent to stay the RFG requirements effective from January 1, 1995 until July 1, 1995, while the Agency completes rulemaking to appropriately change the regulations.

D. Pennsylvania Counties

Twenty-eight counties in Pennsylvania were included as covered areas in EPA's reformulated gasoline regulations based on Governor Robert P. Casey's request dated September 25, 1991 (56 FR 57986, November 15, 1991). See 40 C.F.R. 80.70(j)(11) (i) through (xxviii). The counties referred to are listed as follows: Adams, Allegheny, Armstrong, Beaver, Berks, Blair, Butler, Cambria, Carbon, Columbia, Cumberland, Dauphin, Erie, Fayette, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mercer, Monroe, Somerset, Northampton, Perry, Washington, Westmoreland, Wyoming and York. On December 1, 1994, EPA received a petition from Governor Casey to remove these twenty-eight counties

from the list of areas covered by the requirements of the reformulated gasoline program. Based on the state of Pennsylvania's opt-out request of December 1, 1994, the EPA Administrator formally responded to the State's request in a letter to Governor Casey dated December 12, 1994. In this letter, the Administrator indicated that effective January 1, 1995, and until the formal rulemaking to remove the twenty-eight counties from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in these twenty-eight counties. This decision was based on the particular circumstances that apply in these twenty-eight counties.

E. Hancock and Waldo Counties in Maine

Hancock and Waldo counties were included as a covered areas in EPA's reformulated gasoline regulation based on Governor John R. McKernan's request of June 26, 1991, that these counties be included under the Act's opt-in provision for ozone nonattainment areas (56 FR 46119, September 10, 1991). See 40 CFR 80.70(j)(5) (viii) and (ix). On December 27, 1994, EPA received a petition from the Acting Commissioner of Maine's Department of Environmental Protection, Ms. Deborah Garrett, to remove Hancock and Waldo Counties in Maine from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Garrett is acting for Governor McKernan in this matter. The Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Garrett, dated December 27, 1994, stating EPA's intention to grant Maine's request, and conduct rulemaking to implement the opt-out. The December 28 letter also indicated EPA's intent to stay the reformulated gasoline requirements effective from January 1, 1995, until July 1, 1995, while the Agency completes rulemaking to appropriately change the regulations.

II. EPA's Proposal To Grant New York's, Pennsylvania's, and Maine's Request To Remove Selected Opt-In Areas From the Requirements of the Reformulated Gasoline Program

EPA believes that it is reasonable to construe section 211(k) as authorizing the Agency to establish procedures and requirements for states to opt out of the reformulated gasoline program. This would only apply to areas that have previously opted in under section 211(k)(6); the mandatory covered areas

would not be allowed to opt out of the program.

In section 211(k)(6), Congress expressed its clear intention regarding state opting in to this program. That paragraph establishes that "upon the application of the Governor of a State, the Administrator shall apply the prohibition set forth in paragraph (5) in any (ozone nonattainment) area in the State * * *. The Administrator shall establish an effective date for such prohibition * * *." ¹ However, with respect to opting out, "the statute is silent or ambiguous with respect to the specific issue" and the question is whether EPA's interpretation "is based on a permissible construction of the statute." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). In addition, "[i]f Congress has explicitly left a gap for the Agency to fill, there is an express delegation of authority to the Agency to elucidate a specific provision of the statute by regulation." *Id.* at 843-44. If the delegation is implicit, the Agency may adopt a reasonable interpretation of the statute. *Id.* at 844.

Section 211(k)(1) provides that EPA is to promulgate "regulations establishing requirements for reformulated gasoline." This provision therefore delegates to EPA the authority to define the requirements for reformulated gasoline. Clean Air Act section 301(a)(1) also delegates to EPA the general authority to promulgate "such regulations as are necessary" for EPA to carry out its function under the Act. Given these delegations of legislative rulemaking authority, EPA's interpretation of section 211(k) with respect to opting out should be upheld unless manifestly contrary to the Act. *Chevron*, 467 U.S. at 843-44.

EPA believes that it is appropriate to interpret section 211(k) as authorizing states to opt-out of this program, with the requirements focusing on a reasonable transition out of the program.² There are really two aspects

¹ Paragraph 5 of section 211(k) prohibits the sale of conventional, or non-reformulated gasoline, in covered areas.

² The preamble to the December 15, 1993, final regulations failed to provide a clear discussion of EPA's views on this issue. While EPA noted that it "may pursue a separate action in the future that would allow states to opt out of the RFG program, provided sufficient notice is given," the preamble also indicated there were concerns over whether EPA had authority to allow states to opt-out. 59 FR 7808 (February 16, 1994). The context for these statements, however, makes it clear that EPA's concerns were based on issues surrounding questions of opting-in for only Phase I of the reformulated gasoline program. See 59 FR 7809. As noted above, EPA believes that it does have authority to establish requirements that allow states to opt-out of this program.

to this, the first being whether states should be allowed to opt out at all, the second being what conditions, if any, should be placed on opting out. With respect to the former, a right to opt out is consistent with the Act's recognition that states have the primary responsibility to develop a mix of appropriate control strategies needed to reach attainment with the NAAQS. While various mandatory control strategies were established under the Clean Air Act, the Act still evidences a clear commitment to allowing states the flexibility to determine the appropriate mix of other measures needed to meet their air pollution goals. Section 211(k)'s opt-in provision reflects this deference to state choice, providing that opt-in will occur upon application by the governor. The only discretion EPA retains regarding opt-in is in setting or extending the effective date. Allowing states the right to opt-out is a logical extension of these considerations of deference to state decision making.

Given such deference, it follows that opting out should be accomplished through application of the governor. It also follows that the conditions on opting out should be geared towards achieving a reasonable transition out of the reformulated gasoline program, as compared to requiring a state to justify its decision. EPA has identified two principal areas of concern in this regard. The first involves coordination of air quality planning. For example, reformulated gasoline in opt-in areas has been relied upon by several states in their State Implementation Plan submissions or in their redesignation requests. The second involves appropriate lead time for industry to transition out of the program.

In a separate notice, to be published soon, EPA will be proposing to revise its RFG regulations to remove the affected counties from the program.

III. Temporary Stay Removing the Nine New York Counties, the Twenty-Eight Counties in Pennsylvania, and Two Counties in Maine From the List of Areas Covered by the Reformulated Gasoline Requirements as of January 1, 1995

Clean Air Act section 307(d)(1) requires EPA to follow specified rulemaking procedures in promulgating regulations under section 211(h). Section 307(d) provides, however, that notice and comment rulemaking requirements "shall not apply in the case of any rule or circumstance referred to in subparagraph (A) or (B) of subsection 553(b) of title 5 of the United States Code [i.e. sections 553(b) (A) and (B) of the APA]." Under APA section

553(b)(B), notice and comment are not required "when the agency for good cause finds (and incorporate the finding and a brief statement of reasons thereof in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

EPA is issuing this temporary stay as a final rule without prior notice and comment. This expedited rulemaking procedure is based on the need to act quickly to avoid unnecessary disruption at the inception of the reformulated gasoline program, stemming from recent decisions by various states to opt out of this program. The different circumstances for the various covered areas involved are discussed below.

The final regulations establishing the reformulated gasoline program were issued on December 15, 1993, requiring upstream parties to have reformulated gasoline in the covered areas as of December 1, 1994, and to have reformulated gasoline at all retail outlets in those areas as of January 1, 1995. In late November and December, EPA received requests from Pennsylvania, New York and Maine to opt out various areas in these states. EPA responded to the initial requests from New York and Pennsylvania by letter dated December 12, 1994, indicating EPA's belief that the Act authorizes states to opt out of the reformulated gasoline program, and EPA's intention to grant the request considering the lack of adverse air quality impacts,³ the lack of reliance on reformulated gasoline in the states' SIPs, and the logistical problems associated with providing reformulated gasoline, at least with respect to Jefferson County. EPA announced that it would commence rulemaking to revise its regulations to effectuate the opt out, and effective January 1, 1995 would not enforce the reformulated gasoline requirements in the respective counties. EPA, of course, retains its authority to take appropriate action to address any non-compliance that may have occurred prior to January 1, 1995.

EPA has since learned that its December 12 announcement has led to confusion and disruption in the market place regarding the transition back to conventional gasoline. There is also uncertainty regarding potential liability under EPA's citizen suit provisions. The existence of confusion within the regulated community has led to unfortunate disruptions in the market place. EPA neither intended nor

³The affected areas have not had ozone exceedances for three years. Several of the areas have requests pending before the agency for redesignation to attainment status. The other areas are expected to submit such requests.

expected this result. Instead, EPA's December 12 announcement was an attempt to provide certainty and stability, while at the same time recognizing the value in allowing states to expeditiously opt out of the reformulated gasoline program under appropriate circumstances.

With respect to the Albany-Buffalo area in New York and the affected towns in Maine, EPA did not make a prior announcement of its intention regarding the opt-out of these areas. However, expedited issuance of a temporary stay is also needed for those areas to avoid a patchwork of staggered times for opt out, occurring at the inception of this major program. Such variability would only increase the logistical and other problems facing the regulated community, and disrupt their planning to produce and market reformulated gasoline over the next several months.

This important and complicated program is just starting, and it is necessary that all parties involved have the certainty and stability needed for successful implementation. EPA believes that these circumstances warrant a temporary stay of the reformulated gasoline requirements in these areas effective from January 1, 1995 until July 1, 1995. That will provide adequate time to conduct notice and comment rulemaking and take final action on these opt-out requests.

Given all of the above circumstances, EPA's belief that it is fully authorized to allow the affected areas to opt out, the temporary nature of this stay, and the ability of all parties to comment on the notice of proposed rulemaking to allow the opt out of these areas, EPA believes there is good cause under 5 U.S.C. 553(b) and CAA § 307(d)(1) to issue this final rule without prior notice and comment. For the same reasons, EPA finds there is good cause under 5 U.S.C. 553(d) for the expedited effective date of this final rule.

V. Effective Date

This temporary stay is effective as of January 1, 1995.

VI. Environmental Impact

The temporary stay is not expected to have any adverse environmental effects. The areas covered by this rule have data showing compliance with the National Ambient Air Quality Standard (NAAQS) for ozone for three or more consecutive years.

VII. Economic Impact

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this temporary stay will not have a

significant economic impact on a substantial number of small entities. This temporary stay is not expected to result in any additional compliance cost to regulated parties and, in fact, is expected to decrease compliance costs to the industry and decrease costs to consumer in the affected areas.

VIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Under the Paper Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must obtain Office of Management and Budget (OMB) clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This rule does not create any new information requirements or contain any new information collection activities.

IX. Statutory Authority

The statutory authority for the action in this rule is granted to EPA by section 211 (c) and (k), and section 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 (c) and (k) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, and Motor vehicle pollution.

Dated: December 29, 1994.

Carol M. Browner,
Administrator.

40 CFR Part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a))

2. Section 80.70 is amended by revising the introductory text of paragraph (j) to read as follows.

§ 80.70 Covered areas.

* * * * *

(j) The ozone nonattainment areas listed in this paragraph (j) of this section are covered areas beginning on January 1, 1995, except that those areas listed in paragraphs (j)(5) (viii) and (ix), (j)(10) (i), (iii) and (v) through (xi) and j(11) of this section are covered areas beginning on July 1, 1995. The geographic extent of each covered area listed in this paragraph (j) of this section shall be the nonattainment area boundaries as specified in 40 CFR part 81, subpart C:

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[FR Doc. 95-421 Filed 1-10-95; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-5137-5]

Ocean Dumping; Site Designation Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: This document contains corrections to the final rulemaking for designation of an Ocean Dredged Material Disposal Site (ODMDS) offshore Fort Pierce, Florida. The final rule was published in the **Federal Register** on Thursday, September 2, 1993. The preamble of the Final Rule correctly described the location of the ODMDS. However, the regulatory text gave incorrect coordinates for the location of the Fort Pierce, Florida ODMDS. This technical amendment is necessary to correct the coordinates for the location of the ODMDS.

EFFECTIVE DATE: February 10, 1995.

FOR FURTHER INFORMATION CONTACT: Christopher J. McArthur, 404/347-1740.

SUPPLEMENTARY INFORMATION:

Background

The final rule (September 2, 1993, 58 FR 46544) that is the subject of this correction designated an Ocean Dredged Material Disposal Site (ODMDS) offshore Fort Pierce, Florida as an EPA-approved ocean dumping site for the

dumping of suitable dredged material. Need for Correction

As published, the final rule contained errors in the regulatory text. Coordinates for the location of the Fort Pierce, Florida ODMDS were listed incorrectly.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: December 23, 1994.

Approved by: Patrick M. Tobin,
Acting Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is to be amended by revising paragraph (h)(11)(i) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(11) * * *

(i) Location: 27°28'00" N., 80°12'33" W.; 27°28'00" N., 80°11'27" W.; 27°27'00" N., 80°11'27" W.; and 27°27'00" N., 80°12'33" W.

* * * * *

[FR Doc. 95-701 Filed 1-10-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 271

[FRL-5137-7]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma Department of Environmental Quality (DEQ) applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act, (RCRA), 42 U.S.C. 6926(b). The Environmental Protection Agency (EPA) reviewed Oklahoma's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Oklahoma's hazardous waste program revision